



## Final Regulation Agency Background Document

<b>Agency name</b>	State Mental Health, Mental Retardation and Substance Abuse Services Board
<b>Virginia Administrative Code (VAC) citation</b>	12 VAC 35-45-10 et seq.
<b>Regulation title</b>	Regulations for Providers of Mental Health, Mental Retardation and Substance Abuse, <u>and Brain Injury</u> Services for Children
<b>Action title</b>	Addition of provisions for issuing an order of summary suspension of the license to operate a residential facility for children
<b>Date this document prepared</b>	December 11, 2006

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.*

This action adds a new section to the existing Regulations for Providers of Mental Health, Mental Retardation and Substance Abuse Services for Children, which establishes a process for issuing an order of summary suspension of the license. The existing regulations provide standards for licensing providers of residential treatment services for children with mental illness, mental retardation or substance use disorders and are an addendum to 22VAC42-10-10 et seq., which are generic standards governing a wide variety of residential facilities licensed by the Departments of Mental Health, Mental Retardation and Substance Abuse Services (Department), Social Services, Education, and Juvenile Justice. The standards in this addendum or "Mental Health Module" as it is operationally called, cover a wide range of residential services from small group homes to large residential treatment facilities. The new provisions for issuing an order of summary suspension of the license to operate a facility became effective as emergency regulations in December 2005. The agency is taking this action make these provisions permanent.

The new provisions establish procedures for the Commissioner of Mental Health, Mental Retardation and Substance Abuse Services to issue an order of summary suspension in cases of immediate and substantial threat to the health, safety, and welfare of residents. There are no changes to the regulation since the publication of the proposed regulation.

**Statement of final agency action**

*Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.*

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On December 8, 2006, the State Mental Health, Mental Retardation and Substance Abuse Services Board adopted for final promulgation, the amendment to Regulations for Providers of Mental Health, Mental Retardation ~~and~~ Substance Abuse, and Brain Injury Services for Children, to comply with Chapter 363 of the 2005 Virginia Acts of Assembly.

**Legal basis**

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter numbers, if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

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The State Mental Health, Mental Retardation and Substance Abuse Services Board (Board) has the statutory authority to adopt the proposed regulations under Va. Code § 37.2-100 and Chapter 363 of the 2005 Virginia Acts of Assembly. The authority to adopt the regulations is mandatory.

**Purpose**

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.*

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This action inserts provisions in the Mental Health Module to allow the Commissioner to suspend the license to operate a group home or residential facility for children when there is an immediate and substantial threat to the health, safety, and welfare of the residents. The regulations provide the basis for the Department to act promptly, in accordance with legal protocols, and ensure protections for the legal rights of all parties that may be affected by an action to suspend a license. These provisions also include a requirement for the Department to notify the appropriate agencies when the Commissioner issues an order of summary suspension so families are informed and that plans can be made to relocate the residents of facilities who are affected by the action.

The Board is required to adopt the provisions for issuing an order of summary suspension to comply with legislation enacted by the 2005 Virginia General Assembly. The provisions provide the authority for the Commissioner to address egregious circumstances while ensuring due process for licensees.

## Substance

*Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.*

This regulation provides the framework to allow the Commissioner to suspend the license of a provider to operate a group home or residential facility for children. The regulation includes procedures to govern the appointment of a hearing officer, scheduling an administrative hearing, and notification of parties in conjunction with the issuance of an order of summary suspension of the license. The regulation also establishes required timeframes and procedures for the conduct of the hearing, decision-making, and any appeal of the decision. The regulation also requires the Department to notify appropriate agencies when the Commissioner issues an order of summary suspension so that relocation plans can be made for residents who are affected by the action taken.

## Issues

*Please identify the issues associated with the proposed regulatory action, including:*

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.*

- (1) These provisions are advantageous to the public because they provide additional protections for the health, safety, and welfare of children residing in licensed residential facilities and their families. It implements a legislative change that allow the Commissioner to act promptly to suspend the operation of residential facilities for children when he finds conditions pose an immediate and substantial threat to health or safety of facility residents. Prior to the adoption of this legislation and the emergency regulations, no such authority existed. The only recourse was to go to court, which was not always an immediate solution to an urgent problem. The regulation also includes requirements for notification when an order of summary suspension is issued to ensure that plans can be developed for relocation of the facility residents.
- (2) These provisions are advantageous to the Department because it will enable it to take immediate action to suspend the operation of any residential facility to address egregious circumstances. This action must be taken in conjunction with another administrative proceeding to revoke or deny the license.

A major advantage to the Commonwealth is that the Department will not have to closely monitor providers who place residents at imminent risk for months while the provider goes through the appeal process. The main disadvantage is that time frames are short and implementation will be a challenge for all agencies. The law is very specific and the regulation largely follows the requirements of the law.

- (3) The regulation includes specific procedures to guide the Department in issuing an order of summary suspension to ensure protections for the legal rights of all involved parties.

**Changes made since the proposed stage**

*Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.*

There have been no changes to the text of the regulation since the publication at the proposed stage.

**Public comment**

*Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.*

Commenter	Comment	Agency response
Virginia Office of Protection and Advocacy	Include regulations that specify the expectation that services provided should not diminish during the administrative process.	<p>Once the Commissioner issues the order of summary suspension, the service provider has to immediately discharge residents. Therefore services would not be provided during the administrative process. An order of summary suspension would only be issued if services were significantly diminished. It is already the expectation that services provided should substantially meet all standards if residents are being served.</p> <p>No change has been made in response to this comment.</p>

**All changes made in this regulatory action**

*Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.*

There have been no changes to the text of the regulation since the publication at the proposed stage.

**Regulatory flexibility analysis**

*Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less*

*stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.*

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These regulations are based specifically on the law, which was designed to promote health and safety. The legislation was prescriptive with little leeway in terms of times-frames or simplification. The only time frames that could be extended would be the decision-making time frames for the administrative judge and the Commissioner, neither of which would positively impact small businesses.

### Family impact

*Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

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This regulatory action will establish procedures for issuing an order of summary suspension of a license to operate a group home or residential facility for children when there is an immediate and substantial threat to the health, safety and welfare of the residents. The regulations provide a vehicle for protecting the children who are admitted to licensed facilities and promoting the accountability of service providers. They also require that parents and guardians be notified when an order is issued. This should have a positive impact on the stability the families with children who are residents in the licensed facilities and support parental rights. It also should encourage parents to be involved in and assume the responsibility for their children.

The regulation should not impact marital commitment or disposable family income.